



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
-----------------	-------------	----------------------	---------------------	------------------

09/855,320

05/14/2001

Robert Bayer

705722

1113

23460

7590

03/04/2010

LEYDIG VOIT & MAYER, LTD  
TWO PRUDENTIAL PLAZA, SUITE 4900  
180 NORTH STETSON AVENUE  
CHICAGO, IL 60601-6731

EXAMINER

RAGHU, GANAPATHIRAM

ART UNIT

PAPER NUMBER

1652

NOTIFICATION DATE

DELIVERY MODE

03/04/2010

ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

Chgpatent@leydig.com

Chgpatent1@leydig.com

<b><i>Advisory Action Before the Filing of an Appeal Brief</i></b>	<b>Application No.</b> 09/855,320	<b>Applicant(s)</b> BAYER, ROBERT	
	<b>Examiner</b> GANAPATHIRAMA RAGHU	<b>Art Unit</b> 1652	

**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

THE REPLY FILED 19 February 2010 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires \_\_\_\_\_ months from the mailing date of the final rejection.  
 b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on \_\_\_\_\_. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

#### AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because  
 (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);  
 (b) ☐ They raise the issue of new matter (see NOTE below);  
 (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or  
 (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).  
 5. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.  
 6. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).  
 7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.  
 The status of the claim(s) is (or will be) as follows:  
 Claim(s) allowed: \_\_\_\_\_.  
 Claim(s) objected to: \_\_\_\_\_.  
 Claim(s) rejected: 107-112, 115, 117, 119 and 120.  
 Claim(s) withdrawn from consideration: \_\_\_\_\_.

#### AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).  
 9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).  
 10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

#### REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: Applicants arguments are considered, however they are found to be non-persuasive and examiner has provided evidence and reasons to hold his position, for details see the Final-Rejection dated 12/22/09; that the instant claims 107-112, 115, 117, 119 and 120 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lowe JB1 (U.S. Patent No.: 5,324,663, date of patent 06/28/94) or Lowe2 et al., (U.S. Patent No.: 5,770,420, date of patent 06/23/98) or Lowe JB3 (U.S. Patent No.: 6,268,193, date of patent 07/31/01) or Sasaki et al., (U.S. Patent No.: 7,094,530, date of patent 08/22/06, claiming priority to US Application No.: 08/361,306 filed on 11/29/1994) and in view of de Vries et al., (J. Biol. chem., 1995, Vol. 270 (15): 8712-8722, in IDS), Seed B., (WO 96/40881, in IDS), Staudacher E., (Trends Glycosci and Glycobiol., 1996, Vol. 8 (44): 391-408, in IDS), Malissard et al., (Biochem Biophys Res Commun., 2000, Vol. 267: 169-173, in IDS) and Prieels et al., (J. Biol. Chem., Vol. 256 (20): 10456-10463, in IDS). Examiner has clearly enunciated his position regarding the teachings of all the cited references, especially in his reply on 12/22/09 and has very clearly established that the cited references are in congruence with the obviousness rejection and teach all limitations of the instant claims and are obvious in said teachings with reference to page numbers and the results obtained in the instant invention are very much expected. Therefore, cited references meet all the criteria and parameters (Teaching, Suggestion and Motivation) as defined by Graham v. John Deere Co., 383 U.S. 1, 148 USPQ 459 (1966) and the rationale for TSM test (Teaching, Suggestion and Motivation) according to KSR ruling.

12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). \_\_\_\_\_  
 13. ☐ Other: \_\_\_\_\_.

/GR/ 02/25/10

/Ganapathirama Raghu/  
Patent Examiner

Art Unit 1652

U.S. Patent and Trademark Office  
PTOL-303 (Rev. 08-06)

**Advisory Action Before the Filing of an Appeal Brief**

Part of Paper No. 20100225